

AMENDED IN SENATE JULY 23, 2009

AMENDED IN SENATE JUNE 26, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 335

Introduced by Assembly Member Fuentes

February 18, 2009

An act to add Section 924 to the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 335, as amended, Fuentes. Employment contracts.

Existing law prohibits certain employment contract provisions as against public policy and declares provisions in certain construction contracts between a contractor and subcontractor for work in this state that purport to require dispute resolution between the parties to be commenced or determined outside of the state to be void and unenforceable.

This bill would establish a rebuttable presumption that a choice of law or choice of forum provision in an employment agreement, handbook, or other statement of an employer's policies is unconscionable, violates the public policy of the state, and is void, if the provision would require an employee or job applicant to arbitrate or litigate a claim outside of California that arose from employment or conduct in this state or would deprive the employee or applicant of the protection of California law for such a claim. The bill would require a court to consider specified factors in determining whether a person seeking to enforce the choice of law or choice of forum provision has rebutted the presumption.

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares the following:

2 (a) It is the public policy of the State of California to ensure
3 that California employees have the full benefit of the provisions
4 of the California Labor Code and other provisions of California
5 law that relate to employment and that employees should not be
6 deprived of the protection of California law by contract provisions
7 that require employees or job applicants, as a condition of
8 employment, to submit to the laws of other states for claims that
9 arise from employment, or the securing of employment, in
10 California.

11 (b) All employees should have the right to access the California
12 courts to seek redress for employment claims and employees should
13 not be required to resolve these claims in foreign jurisdictions.

14 (c) Any choice of law or choice of forum provision in a job
15 application, employment agreement, employment handbook, or
16 other statement of an employer's policies applicable to its
17 employees, is *presumed to be* against the public policy of this state
18 if the provision would do either of the following:

19 (1) Require the employee or job applicant to resolve claims
20 outside of California that arose from employment, or the securing
21 of employment, in California.

22 (2) Deprive the employee or job applicant of the protection of
23 California law for claims arising from employment, or the securing
24 of employment, in California.

25 SEC. 2. Section 924 is added to the Labor Code, to read:

26 924. (a) Any choice of law or choice of forum provision in an
27 employment agreement, employment handbook, or other statement
28 of an employer's policies applicable to its employees is presumed
29 to be unconscionable, in violation of the public policy of this state,
30 and void if the provision would do either of the following:

31 (1) Require the employee or job applicant to arbitrate or litigate
32 a claim outside of California that arose from employment or
33 conduct occurring in California.

1 (2) Deprive the employee or job applicant of the protection of
2 California law for claims arising from employment or conduct
3 occurring in California.

4 (b) A court shall consider all of the following factors to
5 determine whether a person seeking to enforce a choice of law or
6 choice of forum provision has rebutted the rebuttable presumption
7 described in subdivision (a):

8 (1) Whether the employee was represented by counsel in
9 negotiations regarding the employment agreement at the time that
10 the choice of law or choice of forum provision was incorporated
11 into the employment agreement.

12 (2) Whether separate consideration was provided by the
13 employer in exchange for the choice of law or choice of forum
14 provision.

15 (3) Whether the choice of law or choice of forum provision
16 provides the employee with rights and remedies that are equal to,
17 or greater than, those provided by California law with respect to
18 the claim.

19 (4) Whether the choice of law or choice of forum provision
20 imposes a financial burden or other burden that would deter the
21 employee from pursuing a claim against his or her employer.

22 (c) This section does not replace any other remedy available
23 under law.